

FCC MAIL SECTION

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Federal Communications Commission

DA 98-954

DISPATCHED BY Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Clinton and Okarche, Oklahoma))

MM Docket No. 98-70
RM-9276

NOTICE OF PROPOSED RULE MAKING

Adopted: May 13, 1998

Released: May 22, 1998

Comment Date: July 13, 1998

Reply Comment Date: July 28, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Tyler Broadcasting Corporation ("petitioner") requesting the substitution of Channel 294C2 for Channel 294C1 at Clinton, Oklahoma, the reallocation of Channel 294C2 from Clinton to Okarche, Oklahoma, as the community's first local aural service, and the modification of Station KCLI-FM's license to specify Okarche as its community of license.¹ Petitioner states that it will apply for the channel, if reallocated to Okarche.

2. Petitioner filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). Okarche and Clinton are approximately 93 kilometers apart while the Commission's Rules stipulate a minimum distance separation of at least 158 kilometers for co-channel Class C1 and Class C2 allotments. Therefore, the two allotments are mutually exclusive.

3. In support of its proposal, petitioner states that Okarche, with a 1990 population of 1,160 persons, is an incorporated community. Okarche has its own local government with a mayor and elected Board of Trustees, which oversee departments providing the community with water and sewer systems, collection and sanitation systems, street construction and upkeep, as well as its own fulltime police and volunteer fire departments. Okarche also has its own

¹ Petitioner currently operates on Channel 295C1 at Clinton. However, on April 2, 1998, the Commission granted its one-step application (BPH-971210ID) to change from Channel 295C1 to Channel 294C1.

kindergarten through twelfth grade school system, public library, recreation facilities, civic organizations, churches, and commercial businesses. In addition, Okarche has a weekly newspaper, the Okarche Chieftain, and a cable television system. Petitioner states that in addition to providing the community with its first local aural service, the allotment of Channel 294C2 to Okarche could enable Station KCLI-FM to provide service to a total of 446,015 persons within an 8,107 square kilometer area. Petitioner acknowledges that there will be a loss of service to 54,423 persons within a 7,796 square kilometer area but states that the entire loss area will continue to receive service from at least five fulltime services. Clinton itself, with a population of 9,298 persons, will continue to receive local aural service from FM Station KGMX and AM Station KCLI. Further, while the allotment of Channel 294C2 will provide all of Okarche with a 70 dBu signal, it will cover less than five percent of the Oklahoma City Urbanized Area with such a signal. Therefore, we will not require the petitioner to provide the Tuck showing required of petitioners whose change of community would result in the provision of a 70 dBu signal to 50% or more of an Urbanized Area.²

4. Channel 294C2 can be allotted to Okarche in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.8 kilometers (1.7 miles) east to accommodate petitioner's desired transmitter site.³

5. We believe petitioner's proposed amendment to the FM Table of Allotments of Channel 294C2 could provide Okarche with its first local aural service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Clinton, Oklahoma	238C2, 295C1	238C2
Okarche, Oklahoma	--	294C2

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before July 13, 1998, and reply comments on or before July 28, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the

² Faye and Richard Tuck, Inc., 3 FCC Rcd 5374 (1988), Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 1052 (1995).

³ The coordinates for Channel 294C2 at Okarche is 35-43-08 North Latitude; 98-00-09 West Longitude.

petitioner, or its counsel or consultant, as follows:

Gary S. Smithwick
Smithwick & Belendiuk, P.C.
1990 M Street, NW
Suite 510
Washington, D.C. 20036
(Counsel to petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the purpose of clarification of information or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.